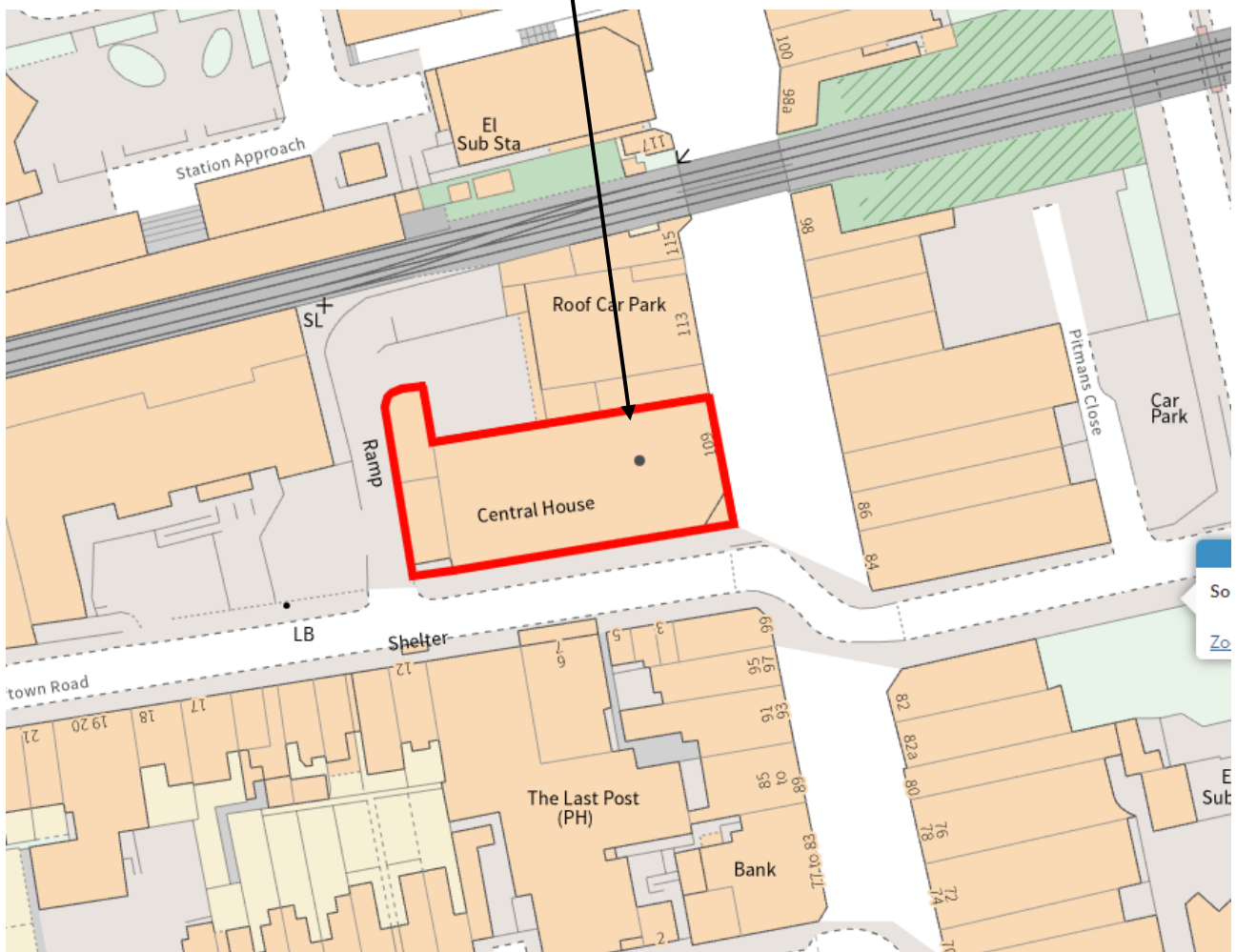


<b>Reference:</b>	21/00218/UNAU_B	
<b>Report Type:</b>	Enforcement	
<b>Ward:</b>	Milton	
<b>Breach of Planning Control:</b>	Installation of four external air conditioning units to roof with associated works	
<b>Address:</b>	107-109 High Street, Southend-on-Sea, Essex, SS1 1LQ	
<b>Case Opened Date:</b>	14 July 2021	
<b>Case Officer:</b>	Edward Robinson/James Benn	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	

107-109 High Street, Southend-on-Sea,  
Essex, SS1 1LQ



## **1 Site and Surroundings**

- 1.1 The site is on a corner plot on the western side of Southend High Street and on the northern side of Cliff town Road. The site is occupied by Central House a typical 1960s style former office block. It has 6 storeys in mixed use, comprising the ground floor job centre and retail units, service areas at first floor and open-air parking at second floor. There is a fenced compound of external plant units at second floor, which have been present since at least 2016.
- 1.2 There are 9no. flats on floor 3 of Central House, further to prior approval (ref. 16/01531/PA3COU). The remaining floors 4-6 are established in office use but have an extant prior approval to convert them to 27 self-contained flats (ref. 21/01299/PA3COU). The roof top is host to principally telecoms apparatus; a recent application indicated there is also a single air conditioning cassette unit.
- 1.3 The site is within the High Street and Clifftown policy areas of the Southend Central Area Action Plan (SCAAP) and the majority of the site (apart from a small area of the north of the site) is within the Town Centre Primary Shopping Area. The Locally Listed Southend Central Railway Station is some 10m to the west of the site.

## **2 Lawful Planning Use**

- 2.1 The lawful planning use of the site is a mixture of Class E (Commercial, Business and Service) and Class C3 (Dwellinghouses) of the Town and Country Planning (Use Classes) Order 1987 (as amended).

## **3 Relevant Planning History**

- 3.1 22/01863/FUL: Install four external air conditioning units to roof with associated works - Application Refused.
- 3.2 16/01531/PA3COU: Change of use of third floor office (Class B1a) to 9 no. self-contained flats (Class C3) (Prior Approval) – Prior Approval granted. It is understood that this prior approval was implemented.
- 3.3 14/01209/PA3COU: Change of use of floors 3-6 from office (Class B1a) to dwelling (Class C3) – Prior approval granted. It is understood that this prior approval was not implemented.

Central House:

- 3.4 21/01299/PA3COU – Change of use and convert floors 4-6 from Office Space (Class B1a) to form 27 self-contained flats (Prior Approval) – Prior Approval granted. It is understood that this prior approval has not been implemented.

## **4 Planning Policy Summary**

- 4.1 The National Planning Policy Framework (NPPF) (2021)
- 4.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)
- 4.3 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP4 (Environment and Urban Renaissance)
- 4.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3

(Efficient and Effective Use of Land) and DM5 (Southend-on-Sea's Historic Environment).

4.5 Southend Central Area Action Plan (SCAAP) (2018): Policies DS1 (A Prosperous Retail Centre), DS2 (Key Views), DS3 (Landmarks and Landmark Buildings), PA1 (High Street Policy Area Development Principles), PA6 (Clifftown Policy Area Development Principles)

4.6 The Southend-on-Sea Design and Townscape Guide (2009)

## **5 The alleged planning breach, harm caused and efforts to resolve breach to date.**

5.1 The identified breach of planning control is:

Installation of four external air conditioning units with associated works externally on the second floor (the flat roof of the first floor) without planning permission.

5.2 In July 2021 a complaint was received by the Council alleging air conditioning units had been installed externally on floor 2 of the building (the external flat roof of floor 1), above the Job Centre, and were causing noise disturbance to the residential units in close proximity above on floor 3. The Council's Enforcement Officer investigated the complaint which identified that no planning permission existed for these air conditioning units and that there are no permitted development rights for these works. A site visit was completed by the Council's Enforcement Officer on 27 July 2022.

5.3 A planning application was received (ref. 22/01863/FUL) which proposed to relocate the air conditioning units to the roof of floor 6 of the building and was refused due to unacceptable residential amenity impacts on the future occupiers of the dwellings capable of being implemented on floors 4-6 under that prior approval. A retrospective planning application has not been received to seek to retain the air conditioning units in their existing location on floor 2.

### Impact on the Character of the Area

5.4 Local and national planning policies and guidance seek to ensure that new development is well designed. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

5.5 Local development plan policies seek to ensure that new development is designed so that it adds to the overall quality of the area and respects the character of the site, its local context and surroundings, provides appropriate detailing that contributes to and enhances the distinctiveness of place; and contribute positively to the space between buildings and their relationship to the public realm. Policy DM1 and the Southend-on-Sea Design and Townscape Guide provide further details on how this can be achieved.

5.6 Paragraph 203 of the NPPF states "The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

5.7 Policy DS3 of the SCAAP seeks to conserve landmark buildings and their settings; this includes Frontages of Townscape Merit which are non-designated heritage assets. Policies DS1 and PA6 support this approach. Policy DM5 seeks to maintain the

significance of designated and non-designated heritage assets.

- 5.8 Paragraph 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest.
- 5.9 Paragraph 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that, in the exercise of planning functions in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Policy DM5 of the Development Management Document seeks to conserve and enhance all heritage assets including their setting, Policy DM5 states that development proposals that affect a heritage asset will be required to conserve and enhance its historic and architectural character, setting and townscape value.
- 5.10 Due to their siting and surrounding existing buildings and structures, public views of the air conditioning units and associated equipment are limited. They are situated to the north side of the building which fronts the onsite carpark and railway line, and are set in some 9m from the west side of the building and some 35m from its east side. Their character is consistent with the existing installations of equipment of similar appearance on floor 2 of the building. It is not considered that they materially harm the character and appearance of the subject building. The significance of nearby designated and non-designated heritage assets is not affected such that there is a neutral impact.
- 5.11 It is not considered that the design, size, siting and scale of the unauthorised development results in any significant harm to the character and appearance of the site, the streetscene and the area more widely, including the setting of the Locally Listed Southend Central Railway Station.

#### Amenity Impacts

- 5.12 Local and national planning policies and guidance seek to secure high quality development which protects amenity. Policy DM1 of the Development Management Document specifically identifies that development should protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight. Further advice on how to achieve this is set out in the Council's Design and Townscape Guide.
- 5.13 These air conditioning units on floor 2 of the building are close to the residential flats above on floor 3. A complaint has been received by the Council from a resident concerned at the noise being emitted from the air conditioning units. No planning application has been submitted seeking to retain the air conditioning units in their existing location on floor 2. It has not been reasonably demonstrated that the residential amenity of the occupiers of the flats on floor 3 and the future occupiers of the residential dwellings which could be provided on floors 4-6 are, and would for the lifetime of these air conditioning units be, reasonably protected from noise and vibration impacts from the equipment.
- 5.14 It has not been demonstrated that the residential amenity of existing and future neighbouring occupiers would be reasonably protected. This is unacceptable and contrary to the relevant local and national policies.

#### Enforcement Action

- 5.15 Given the harm identified above, it is reasonable, expedient and in the public interest to pursue enforcement action in the circumstances of this case. Enforcement action in this case will reasonably aim to secure the removal of the unauthorised air conditioning units in their entirety and remove from the site all materials resulting from compliance with the removal of the development. No lesser steps that could remedy the identified breach or associated harm have been identified.
- 5.16 Staff consider that taking enforcement action is proportionate and justified in the circumstances of the case and that an enforcement notice should be served as this will bring further focus to the need for the breach to cease and the identified harm to be remedied. Service of an enforcement notice carries its own right of appeal and does not fetter the owner in seeking to gain planning permission for a different proposal which remedies the identified harm, albeit the owner's attempts to do so through planning application 22/01863/FUL were unsuccessful.
- 5.17 Taking enforcement action in this case may amount to an interference with the owner/occupiers' human rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area in the public interest.

## **6 Equality and Diversity Issues**

- 6.1 The Equality Act 2010 (as amended) imposes important duties on public authorities in the exercise of their functions and specifically introduced a Public Sector Equality Duty. Under this duty, public organisations are required to have due regard for the need to eliminate unlawful discrimination, harassment, and victimisation, and must advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Officers have, in considering this planning enforcement case and preparing this report, had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the decision recommended will not conflict with the Council's statutory duties under this legislation.

## **7 Recommendation**

- 7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION to:**
- a) Remove from the site the four air conditioning units and associated equipment in their entirety from floor 2 of the building (the external flat roof of floor 1), and
  - b) Remove from site all materials resulting from compliance with a)
- 7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.
- 7.3 When serving an Enforcement Notice the Local Planning Authority must ensure a reasonable time for compliance. In this case a compliance period of 3 months is considered reasonable for the removal of the air conditioning units.